

By: Senator(s) Ross

To: Judiciary, Division A

SENATE BILL NO. 2646
(As Passed the Senate)

1 AN ACT TO AMEND SECTIONS 13-5-23, 13-5-25, 13-5-34 AND
2 25-7-61, MISSISSIPPI CODE OF 1972, TO MAKE TECHNICAL AMENDMENTS TO
3 THE JURY PATRIOT ACT AND TO DELAY THE EFFECTIVE DATE OF THE
4 LENGTHY TRIAL FUND UNTIL SUCH TIME AS IT IS FULLY FUNDED; AND FOR
5 RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 SECTION 1. Section 13-5-23, Mississippi Code of 1972, is
8 amended as follows:

9 [Until January 1, 2008, this section shall read as follows:]

10 13-5-23. All qualified persons shall be liable to serve as
11 jurors, unless excused by the court for one (1) of the following
12 causes:

13 (a) When the juror is ill, or when on account of
14 serious illness in the juror's family, the presence of the juror
15 is required at home,

16 (b) When the juror's attendance would cause a serious
17 financial loss to the juror or to the juror's business,

18 (c) When the juror is under an emergency, fairly
19 equivalent to those mentioned in the foregoing paragraphs (a) and
20 (b), or

21 (d) When the potential juror is a breast-feeding
22 mother.

23 An excuse of illness under paragraph (a) may be made to the
24 clerk of court outside of open court by providing the clerk with
25 either a certificate of a licensed physician or an affidavit of
26 the juror, stating that the juror is ill or that there is a
27 serious illness in the juror's family. The test of an excuse
28 under paragraph (b) shall be whether, if the juror were

29 incapacitated by illness or otherwise for a week, some other
30 persons would be available or could reasonably be procured to
31 carry on the business for the week, and the test of an excuse
32 under paragraph (c) shall be such as to be the fair equivalent,
33 under the circumstances of that prescribed under paragraph (b).
34 In cases under paragraphs (b), (c) and (d), the excuse must be
35 made by the juror, in open court, under oath.

36 It shall be unlawful for any employer or other person to
37 persuade or attempt to persuade any juror to avoid jury service,
38 or to intimidate or to threaten any juror in that respect. So to
39 do shall be deemed an interference with the administration of
40 justice and a contempt of court and punishable as such.

41 But a tales juror, save when drawn and retained for the week,
42 shall not be compelled to serve two (2) days successively unless
43 the case in which the juror is impaneled continues longer than one
44 (1) day. Grand jurors shall serve until discharged by the court.

45 **[From and after January 1, 2008, this section shall read as**
46 **follows:]**

47 13-5-23. (1) All qualified persons shall be liable to serve
48 as jurors, unless excused by the court for one (1) of the
49 following causes:

50 (a) When the juror is ill and, on account of the
51 illness, is incapable of performing jury service;

52 (b) When the juror's attendance would cause undue or
53 extreme physical or financial hardship to the prospective juror or
54 a person under his or her care or supervision; or

55 (c) When the potential juror is a breast-feeding
56 mother.

57 (2) An excuse of illness under subsection (1)(a) of this
58 section may be made to the clerk of court outside of open court by
59 providing the clerk with a certificate of a licensed physician,
60 stating that the juror is ill and is unfit for jury service, in
61 which case the clerk may excuse the juror. If the excuse of

62 illness is not supported by a physician's certificate, a judge of
63 the court for which the individual was called to jury service
64 shall decide whether to excuse an individual under subsection
65 (1)(a) of this section.

66 (3) (a) The test of an excuse under subsection (1)(b) of
67 this section for undue or extreme physical or financial hardship
68 shall be whether the individual would either:

69 (i) Be required to abandon a person under his or
70 her personal care or supervision due to the impossibility of
71 obtaining an appropriate substitute caregiver during the period of
72 participation in the jury pool or on the jury; or

73 (ii) Incur costs that would have a substantial
74 adverse impact on the payment of the individual's necessary daily
75 living expenses or on those for whom he or she provides the
76 principal means of support; or

77 (iii) Suffer physical hardship that would result
78 in illness or disease.

79 (b) "Undue or extreme physical or financial hardship"
80 does not exist solely based on the fact that a prospective juror
81 will be required to be absent from his or her place of employment
82 or business.

83 (c) A judge of the court for which the individual was
84 called to jury service shall decide whether to excuse an
85 individual under subsection (1)(b) of this section.

86 (d) A person asking to be excused based on a finding of
87 undue or extreme physical or financial hardship must take all
88 actions necessary to have obtained a ruling on that request by no
89 later than the date on which the individual is scheduled to appear
90 for jury duty.

91 (e) A person asking a judge to grant an excuse under
92 subsection (1)(b) of this section may be required to provide the
93 judge with documentation such as, but not limited to, federal and
94 state income tax returns, medical statements from licensed

95 physicians, proof of dependency or guardianship and similar
96 documents, which the judge finds to clearly support the request to
97 be excused. Failure to provide satisfactory documentation may
98 result in a denial of the request to be excused.

99 (f) In cases under subsection (1)(c) of this section,
100 the excuse must be made by the juror in open court under oath.

101 (4) * * * A person is excused from jury service permanently
102 only when the deciding judge determines that the underlying
103 grounds for being excused are of a permanent nature. A person who
104 has been summoned for jury duty who meets the age threshold for
105 exemption from jury service shall have the option to be
106 permanently excused from jury service due to age by filing with
107 the circuit clerk a notarized request to be permanently excused.

108 (5) * * * Grand jurors shall serve until discharged by the
109 court.

110 **SECTION 2.** Section 13-5-25, Mississippi Code of 1972, is
111 amended as follows:

112 **[Until January 1, 2008, this section shall read as follows:]**

113 13-5-25. Every citizen over sixty-five (65) years of age,
114 and everyone who has served on the regular panel as a juror in the
115 actual trial of one or more litigated cases within two (2) years,
116 shall be exempt from service if he claims the privilege; but the
117 latter class shall serve as talesmen, and on special venire, and
118 on the regular panel, if there be a deficiency of jurors. No
119 qualified juror shall be excluded because of any such reasons, but
120 the same shall be a personal privilege to be claimed by any person
121 selected for jury duty. Any citizen over sixty-five (65) years of
122 age may claim this personal privilege outside of open court by
123 providing the clerk of court with information that allows the
124 clerk to determine the validity of the claim.

125 Provided, however, that no person who has served on the
126 regular panel as a juror in the actual trial of one or more

127 litigated cases in one (1) court may claim the exemption in any
128 other court where he may be called to serve.

129 **[From and after January 1, 2008, this section shall read as**
130 **follows:]**

131 13-5-25. Every citizen over seventy (70) years of age, and
132 everyone who has served * * * as a grand juror or as a petit juror
133 in the * * * trial of * * * a litigated case within two (2) years,
134 shall be exempt from service if the juror claims the
135 privilege * * *. No qualified juror shall be excluded because of
136 any such reasons, but the same shall be a personal privilege to be
137 claimed by any person selected for jury duty. Any citizen over
138 seventy (70) years of age may claim this personal privilege
139 outside of open court by providing the clerk of court with
140 information that allows the clerk to determine the validity of the
141 claim.

142 Provided, however, that no person who has served * * * as a
143 grand juror or as a petit juror in a trial of a litigated case in
144 one (1) court may claim the exemption in any other court where the
145 juror may be called to serve.

146 **SECTION 3.** Section 13-5-28, Mississippi Code of 1972, is
147 amended as follows:

148 **[Until January 1, 2008, this section shall read as follows:]**

149 13-5-28. If a grand, petit or other jury is ordered to be
150 drawn, the clerk thereafter shall cause each person drawn for jury
151 service to be served with a summons, either personally or by mail,
152 addressed to the juror at the juror's usual residence, business or
153 post office address, requiring the juror to report for jury
154 service at a specified time and place.

155 **[From and after January 1, 2008, this section shall read as**
156 **follows:]**

157 13-5-28. If a grand, petit or other jury is ordered to be
158 drawn, the clerk thereafter shall cause each person drawn for jury
159 service to be served with a summons, either personally or by mail,

160 addressed to the juror at the juror's usual residence, business or
161 post office address, requiring the juror to report for jury
162 service at a specified time and place. The summons shall include
163 instructions to the potential jurors that explain, in layman's
164 terms, the provisions of Section 13-5-23.

165 **SECTION 4.** Section 13-5-34, Mississippi Code of 1972, is
166 amended as follows:

167 **[Until January 1, 2008, this section shall read as follows:]**

168 13-5-34. A person summoned for jury service who fails to
169 appear or to complete jury service as directed shall be ordered by
170 the court to appear forthwith and show cause for his failure to
171 comply with the summons. If he fails to show good cause for
172 noncompliance with the summons, he is guilty of criminal contempt
173 and upon conviction may be fined not more than One Hundred Dollars
174 (\$100.00) or imprisoned not more than three (3) days, or both.

175 **[From and after January 1, 2008, this section shall read as**
176 **follows:]**

177 13-5-34. (1) A person summoned for jury service who fails
178 to appear or to complete jury service as directed, and who has
179 failed to obtain a postponement in compliance with the provisions
180 for requesting a postponement, or who fails to appear on the date
181 set pursuant to Section 13-5-33, may be ordered by the court to
182 appear * * * and show cause for * * * failure to comply with the
183 summons. If the juror fails to show good cause for noncompliance
184 with the summons, the juror may be held in civil contempt of court
185 and may be fined not more than Five Hundred Dollars (\$500.00) or
186 imprisoned not more than three (3) days, or both. The prospective
187 juror may be excused from paying sanctions for good cause shown or
188 in the interest of justice.

189 (2) In addition to, or in lieu of, the fine or imprisonment
190 provided in subsection (1) of this section, the court may order
191 that the prospective juror complete a period of community service
192 for a period no less than if the prospective juror would have

193 completed jury service, and provide proof of completion of this
194 community service to the court.

195 **SECTION 5.** Section 25-7-61, Mississippi Code of 1972, is
196 amended as follows:

197 **[Effective until January 1, 2008, or such time as the Lengthy**
198 **Trial Fund is fully funded by a specific appropriation of the**
199 **Legislature, whichever is later, this section shall read as**
200 **follows:]**

201 25-7-61. (1) Fees of jurors shall be payable as follows:

202 (a) Grand jurors and petit jurors in the chancery,
203 county, circuit and special eminent domain courts shall be paid an
204 amount to be set by the board of supervisors, not to be less than
205 Twenty-five Dollars (\$25.00) per day and not to be greater than
206 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
207 25-3-41. In the trial of all cases where jurors are in charge of
208 bailiffs and are not permitted to separate, the sheriff with the
209 approval of the trial judge may pay for room and board of jurors
210 on panel for actual time of trial.

211 No grand juror shall receive any compensation except mileage
212 unless he shall have been sworn as provided by Section 13-5-45;
213 and no petit juror except those jurors called on special venires
214 shall receive any compensation authorized under this subsection
215 except mileage unless he shall have been sworn as provided by
216 Section 13-5-71.

217 (b) Jurors making inquisitions of idiocy, lunacy or of
218 unsound mind and jurors on coroner's inquest shall be paid Five
219 Dollars (\$5.00) per day plus mileage authorized in Section 25-3-41
220 by the county treasurer on order of the board of supervisors on
221 certificate of the clerk of the chancery court in which such
222 inquisition is held.

223 (c) Jurors in the justice courts shall be paid an
224 amount of not less than Ten Dollars (\$10.00) per day and not more
225 than Fifteen Dollars (\$15.00) per day, to be established by the

226 board of supervisors. In all criminal cases in the justice court
227 wherein the prosecution fails, the fees of jurors shall be paid by
228 the county treasurer on order of the board of supervisors on
229 certificate of the county attorney in all counties that have
230 county attorneys, otherwise by the justice court judge.

231 (2) Any juror may return the fees provided as compensation
232 for service as a juror to the county which paid for such person's
233 service as a juror. The fees returned to the county may be
234 earmarked for a particular purpose to be selected by the juror,
235 including:

236 (a) The local public library;

237 (b) Local law enforcement;

238 (c) The Mississippi Burn Care Fund created in Section
239 7-9-70, Mississippi Code of 1972; or

240 (d) Any other governmental agency.

241 **[From and after January 1, 2008, or such time as the Lengthy**
242 **Trial Fund is fully funded by a specific appropriation of the**
243 **Legislature, whichever is later, this section shall read as**
244 **follows:]**

245 25-7-61. (1) Fees of jurors shall be payable as follows:

246 (a) Grand jurors and petit jurors in the chancery,
247 county, circuit and special eminent domain courts shall be paid an
248 amount to be set by the board of supervisors, not to be less than
249 Twenty-five Dollars (\$25.00) per day and not to be greater than
250 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
251 25-3-41. In the trial of all cases where jurors are in the charge
252 of bailiffs and are not permitted to separate, the sheriff with
253 the approval of the trial judge may pay for room and board of
254 jurors on panel for actual time of trial.

255 No grand juror shall receive any compensation except mileage
256 unless the juror shall have been sworn as provided by Section
257 13-5-45; and no petit juror except those jurors called on special
258 venires shall receive any compensation authorized under this

259 subsection except mileage unless the juror shall have been sworn
260 as provided by Section 13-5-71.

261 (b) Jurors making inquisitions of idiocy, lunacy or of
262 unsound mind and jurors on coroner's inquest shall be paid Five
263 Dollars (\$5.00) per day plus mileage authorized in Section 25-3-41
264 by the county treasurer on order of the board of supervisors on
265 certificate of the clerk of the chancery court in which such
266 inquisition is held.

267 (c) Jurors in the justice courts shall be paid an
268 amount of not less than Ten Dollars (\$10.00) per day and not more
269 than Fifteen Dollars (\$15.00) per day, to be established by the
270 board of supervisors. In all criminal cases in the justice court
271 wherein the prosecution fails, the fees of jurors shall be paid by
272 the county treasurer on order of the board of supervisors on
273 certificate of the county attorney in all counties that have
274 county attorneys, otherwise by the justice court judge.

275 (2) Any juror may return the fees provided as compensation
276 for service as a juror to the county which paid for such person's
277 service as a juror. The fees returned to the county may be
278 earmarked for a particular purpose to be selected by the juror,
279 including:

280 (a) The local public library;

281 (b) Local law enforcement;

282 (c) The Mississippi Burn Care Fund created in Section
283 7-9-70, Mississippi Code of 1972; or

284 (d) Any other governmental agency.

285 (3) The Administrative Office of Courts shall promulgate
286 rules to establish a Lengthy Trial Fund to be used to provide full
287 or partial wage replacement or wage supplementation to jurors who
288 serve as petit jurors in civil cases for more than ten (10) days.

289 (a) The Uniform Circuit and County Court Rules shall
290 provide for the following:

291 (i) The selection and appointment of an
292 administrator for the fund.

293 (ii) Procedures for the administration of the
294 fund, including payments of salaries of the administrator and
295 other necessary personnel.

296 (iii) Procedures for the accounting, auditing and
297 investment of money in the Lengthy Trial Fund.

298 (iv) A report by the Administrative Office of
299 Courts on the administration of the Lengthy Trial Fund in its
300 annual report on the judicial branch, setting forth the money
301 collected for and disbursed from the fund.

302 (v) The Lengthy Trial Fund Administrator and all
303 other necessary personnel shall be employees of the Administrative
304 Office of Courts.

305 (b) The administrator shall use any monies deposited in
306 the Lengthy Trial Fund to pay full or partial wage replacement or
307 supplementation to jurors whose employers pay less than full
308 regular wages when the period of jury service lasts more than ten
309 (10) days.

310 (c) To the extent funds are available in the Lengthy
311 Trial Fund, and in accordance with any rules or regulations
312 promulgated by the Administrative Office of Courts, the court may
313 pay replacement or supplemental wages out of the Lengthy Trial
314 Fund not to exceed Three Hundred Dollars (\$300.00) per day per
315 juror beginning on the eleventh day of jury service. In addition,
316 for any jurors who qualify for payment by virtue of having served
317 on a jury for more than ten (10) days, the court, upon finding
318 that such service posed a significant financial hardship to a
319 juror, even in light of payments made with respect to jury service
320 after the tenth day, may award replacement or supplemental wages
321 out of the Lengthy Trial Fund not to exceed One Hundred Dollars
322 (\$100.00) per day from the fourth to the tenth day of jury
323 service.

324 (d) Any juror who is serving or has served on a jury
325 that qualifies for payment from the Lengthy Trial Fund, provided
326 the service commenced on or after January 1, 2008, may submit a
327 request for payment from the Lengthy Trial Fund on a form that the
328 administrator provides. Payment shall be limited to the
329 difference between the jury fee specified in subsection (1) of
330 this section and the actual amount of wages a juror earns, up to
331 the maximum level payable, minus any amount the juror actually
332 receives from the employer during the same time period.

333 (i) The form shall disclose the juror's regular
334 wages, the amount the employer will pay during the term of jury
335 service starting on the eleventh day and thereafter, the amount of
336 replacement or supplemental wages requested, and any other
337 information the administrator deems necessary for proper payment.

338 (ii) The juror also shall be required to submit
339 verification from the employer as to the wage information provided
340 to the administrator, for example, the employee's most recent
341 earnings statement or similar document, prior to initiation of
342 payment from the fund.

343 (iii) If an individual is self-employed or
344 receives compensation other than wages, the individual may provide
345 a sworn affidavit attesting to his or her approximate gross weekly
346 income, together with such other information as the administrator
347 may require, in order to verify weekly income.

348 (4) Nothing in this section shall be construed to impose an
349 obligation on any county to place monies in the Lengthy Trial Fund
350 or to pay replacement or supplemental wages to any juror from
351 county funds.

352 **SECTION 6.** This act shall take effect and be in force from
353 and after January 1, 2008.